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## Judge Gesell's Ruling On Post's Viet Series

Following is the text of U.S. District Judge Gerhard A. Gesell's ruling on The Washington Post's publication of Pentagon documents.

This morning The Washington Post, a paper of general circulation in this city with correspondents throughout the country, published an article based upon matters contained in a 47-volume "top secret" publication prepared under the auspices of the Department of Defense, reviewing various developments relating to the Vietnam war over a period of some sixteen years prior to 1968. The United States, through the Attorney General, seeks a temporary restraining order prohibiting The Post from further publications based on this data, which The Post contemplates making in serial fashion continuing with tomorrow's morning edition which goes to press at 9:00 p.m., and subsequent editions. In a related case The New York Times, which was also publishing excerpts from this material, has been temporarily enjoined until 1:00 p.m. on Saturday, June 19, and proceedings are now in progress in the Southern District of New York *in camera*, to determine whether or not a preliminary injunction shall issue against The Times.

The United States contends that the material contained in these 47 volumes is highly sensitive, as its "top secret" designation indicates, and asserts that the United States will be irreparably injured in its conduct of the war and in its diplomatic relations by disclosures which it has reason to believe are contemplated in the subsequent Post articles. 18 U.S.C. 793 provides for possible criminal sanctions in these circumstances but Congress in that statute did not authorize any injunctive action. Indeed, Con-

gress appears to have condemned any pre-existing restraint or censorship of the press by the language of the Internal Security Act of 1950 (Sec. 1(b)), of which this statute is a part, and the Supreme Court speaking through Chief Justice Hughes in *Near v. Minnesota*, 283 U.S. 697 (1931), has outlined the historic reasons supporting the total freedom of the press to publish as guaranteed by the First Amendment of the Constitution.

A temporary restraining order is designed to preserve the status quo for a brief period until all of the issues can be fully developed. It is a matter of discretion with a court whether such an order shall issue. The court has before it no precise information suggesting in what respects, if any, the publication of this information will injure the United States and must take cognizance of the fact that there are apparently private parties in possession of this data which they will continue to leak to other sources.

What is presented is a raw question of preserving the freedom of the press as it confronts the efforts of the government to impose a prior restraint on publication of essentially historical data. The information unquestionably will be embarrassing to the United States but there is no possible way after the most full and careful hearing that a court would be able to determine the implications of publication on the conduct of government affairs or to weigh these implications against the effects of withholding information from the public. It is to be strongly regretted that The Post has been unwilling to allow the court to pursue this matter over the next two or three days and voluntarily to withhold publication. Unfortu-

nate as this may be. The Post's position does not obviate the necessity for the court to determine the law, particularly since the Attorney General has stated he will pursue this action regardless of what result is reached in the Times case. The Post stands in serious jeopardy of criminal prosecution. This is the only remedy our Constitution or the Congress has provided. The Post will be allowed to publish and the request for a temporary restraining order is denied.

The application of the American Civil Liberties Union to participate in these proceedings as *amicus* is denied.